



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NRC Data Systems

File: B-222912

Date: July 18, 1986

DIGEST

Protest that agency failed to obtain full and open competition because the incumbent contractor did not receive a solicitation package and was not otherwise informed by the agency that a new solicitation had been issued is denied where the agency complied with the statutory and regulatory requirements regarding publicizing the procurement and the incumbent had reason to know that its address on the agency's mailing list for the solicitation was incorrect.

DECISION

NRC Data Systems protests any award of a contract under request for proposals (RFP) No. 86-34(N), issued for data conversion services by the Department of Health and Human Services' Centers for Disease Control, Atlanta, Georgia. NRC complains that even though it was the incumbent contractor performing the agency's current requirement for these services, the agency failed to provide it with a copy of the solicitation prior to the closing date for receipt of proposals. We deny the protest.

The agency announced in the Commerce Business Daily (CBD) on October 2, 1985, its intention to issue a competitive solicitation for the required services. There was also notice concerning this procurement in the CBD on November 22. The announced, anticipated issuance date was November 1, but the agency did not actually issue the solicitation until January 30, 1986. The closing date was March 3. The agency reports that it mailed solicitations to 77 firms on its list of potential offerors and that NRC was included on the mailing list. The list shows NRC's address as: 1935 Cliff Valley Way, Suite 118, Atlanta, Georgia 30229. That address is correct except for the zip code. The correct zip code is 30329. The agency received three timely proposals.

NRC contends that it has never received a copy of the RFP by mail.^{1/} The protester adds that it had experienced other problems with mail misaddressed by the agency, although there is no allegation that other

^{1/} The agency reports that no solicitations were returned by the Postal Service as undeliverable and that each solicitation package contained a return address.

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misaddressed mail was not ultimately received. NRC says that it fully expected to be solicited since it was performing satisfactorily as the incumbent. Moreover, says the protester, its representative inquired of the agency several times prior to January 30 as to when the solicitation would be issued, but the person to whom the representative spoke said she did not know. In addition, when the protester signed an extension of its current contract on January 28, no one in the agency's procurement office informed the firm that the solicitation would be issued only 2 days hence. Even after the solicitation was issued, says the protester, it had additional contacts with the procurement office concerning payments under its current contract, but was not informed that the new solicitation had been issued. The firm says it first learned that the agency had issued the solicitation the day after the closing date when it telephoned the agency on a matter involving its current contract. The protester adds that just prior to the closing date, several of its telephone calls to a specific agency official were not returned.

The protester contends that the agency should either accept its late proposal or resolicit the requirement because the agency failed to obtain full and open competitive as required by the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a)(1)(A) (Supp. II 1984). In support of this contention, the protester relies heavily on The Thorson Co., GSBICA No. 8185-P, Oct. 30, 1985, 85-3 BCA ¶ 18,516. In that case, the General Services Board of Contract Appeals required a resolicitation where the incumbent contractor did not receive a copy of the solicitation. Although the agency established that it had the incumbent's correct address and that it mailed the solicitation to the incumbent, it failed specifically to allege or prove that it had mailed the solicitation to the correct address. The Board noted a history of the agency's sending mail to the incumbent at an old address that now is used by a competitor. The Board concluded that since only the incumbent's competitor submitted an offer, full and open competition was not obtained. NRC contends that its case is more compelling than Thorson's because, here, the facts show that the agency mailed the solicitation to the wrong address.

The agency's position is, first, that the protester had adequate notice of the new solicitation. The agency refers to the two CBD notices and also says that it posted a notice of the issuance of the solicitation on the bid board at the contracting office. The agency says it took all reasonable steps to ensure that NRC was notified of the procurement and did not discover until after the closing date that the firm may not have received its copy of the RFP. But, in any event, says the agency, adequate competition and reasonable prices were obtained, and there is no indication that NRC was deliberately excluded from the competition. The agency cites a number of our prior cases holding that, under such circumstances, a potential offeror bears the risk of nonreceipt of solicitation materials. See, e.g., CompuServe, B-192905, Jan. 30, 1979, 79-1 CPD ¶ 63.

Under CICA, agencies are required when procuring property or services to obtain full and open competition through the use of competitive procedures. 41 U.S.C. § 253(a)(1)(A) (Supp. II 1984). "Full and open competition" is obtained when "all responsible sources are permitted to submit sealed bids or competitive proposals." Id. §§ 259(c); and 403(7). We have said that in view of the clear intent of Congress to make full and open competition the standard for conducting government procurements, we will give careful scrutiny to an allegation that a particular firm was not provided an opportunity to compete for a particular contract. Trans World Maintenance, Inc., B-220947, Mar. 11, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 239. In so doing, we will take into account all of the circumstances surrounding a firm's nonreceipt of solicitation materials, as well as the agency's explanation. Id. Using this approach, we have sustained protests and recommended resolicitation where we found that a firm's failure to receive a solicitation was the result of significant deficiencies on the part of the agency. See Trans World Maintenance, Inc., B-220947, supra; Dan's Moving & Storage, Inc., B-222431, May 28, 1986, 86-1 CPD ¶ 496.

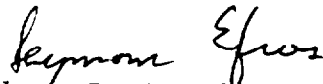
On the other hand, the government cannot guarantee that mistakes will never occur, even when proper procedures are followed. Thus, in other cases decided following the effective date of CICA, we have declined to disturb procurements in which an agency contributed to a contractor's nonreceipt of solicitation materials where it did not appear that the agency's contribution was anything more than mere inadvertence. See, e.g., Leavenworth Office Equipment, B-220905, Nov. 12, 1985, 85-2 CPD ¶ 543 (agency mistakenly misaddressed solicitation package intended for the incumbent contractor); James L. Clark, Jr., Plumbing and Heating Co., Inc., B-220673, Oct. 29, 1985, 85-2 CPD ¶ 484 (agency's failure to send amendment to the protester was apparently an isolated oversight).

Although the CICA standard of full and open competition requires an agency to take reasonable steps to ensure that a procurement is open to all responsible sources, that requirement should not be read so broadly as to require an agency either to accept a late submission or to resolicit whenever the agency contributes to a prospective contractor's failing to receive solicitation materials in a timely manner. Not only would this be inefficient from the government's perspective, but the integrity of the system would be undermined if the other bidders or offerors could not rely on the finality of bid or proposal closing dates. Rather, we think an agency has satisfied CICA's full and open competition requirement when it makes a diligent, good-faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials, and it obtains a reasonable price. The fact that inadvertent mistakes occur in this process should not in all cases be grounds for disturbing the procurement.

In this case, we think the agency satisfied CICA's full and open competition requirement. The agency published two notices in the CBD concerning this procurement and mailed solicitations to 77 bidders on its mailing list. Although this list contained an incorrect zip code for NRC, there is no indication that the agency was aware of this fact. Moreover, we note that two modifications to NRC's current contract, which NRC signed on December 23, 1985, and either January 27 or 28, 1986, respectively, each contained the incorrect zip code: 30229. Significantly, one of the express purposes of the first of these modifications was to correct NRC's address, since the firm recently had moved. Having signed the modification with the incorrect zip code, NRC should have known that the agency's contracts office probably did not have the firm's correct address on the bidders list. Yet, there is no indication that NRC ever attempted to assure itself that the address on the list was correct. In view of the numerous misaddressed items the protester received from both the agency's finance office and its contracts office, we think such an inquiry would have been prudent. Further, although agency personnel apparently did not advise NRC that the new solicitation had been issued, even though NRC had a number of contacts with the agency following the issuance date, NRC does not allege that after the issuance date, it ever expressly asked whether the solicitation had been issued.

Finally, with respect to NRC's contention that the holding in The Thorson Co., GSBCA No. 8185-P, supra, controls here, we have considered that case previously in G & L Oxygen and Medical Supply Services, B-220368, Jan. 23, 1986, 86-1 CPD ¶ 78, but found it to be distinguishable. We said the decision in Thorson appeared to be based on the fact that only one offer had been received, and that offer was from a competitor to whom the protester's solicitation package may have been sent. In this case, however, the agency received three offers, which we find sufficient to satisfy the full and open competition requirement. See Metro Medical Downtown, B-220399, Dec. 5, 1985, 85-2 CPD ¶ 631.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel